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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 6 अगस्त, 2004

आ.अ. 45.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग त्रिपुरा सरकार के परामर्श से एतद्द्वारा श्री के. वी. सत्यनारायण, आई.ए.एस. के स्थान पर श्री जी. कामेश्वर राव, आई.ए.एस. (एम.टी. 83) को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए त्रिपुरा राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री जी. कामेश्वर राव त्रिपुरा सरकार के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे।

3. श्री जी. कामेश्वर राव मुख्य निर्वाचन अधिकारी, त्रिपुरा के पद पर कार्य करते हुए त्रिपुरा सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा।

[सं. 154/टी.पी./2004-का.प्रशासन]

आदेश से,

नरेन्द्र ना. बुटेलिया, अवर सचिव

## ELECTION COMMISSION OF INDIA

New Delhi, the 6th August, 2004

**O.N. 45.**— In exercise of the power conferred by Sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India in consultation with the State Government of Tripura hereby nominates Shri G. Kameswara Rao, IAS (MT : 83) as the Chief Electoral Officer for the State of Tripura with effect from the date he takes over charge and until further orders vice Shri K. V. Satyanarayana, IAS.

2. Shri G. Kameswara Rao shall cease to hold and hand over forthwith the charge of all or any charges of work under the State Government of Tripura, which he may be holding before such assumption of office.

3. Shri G. Kameswara Rao, while functioning as the Chief Electoral Officer, Tripura shall not hold any additional charge whatsoever under the Government of Tripura except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/TP/2004-P. Admn.]

By Order,

NARENDRA N. BUTOLIA, Under Secy.

आदेश

नई दिल्ली, 9 अगस्त, 2004

**आ.अ. 46.**— यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा-विनिर्दिष्ट राजस्थान विधान सभा के साधारण-निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उनके नाम के सामने विनिर्दिष्ट निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा-दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त अभ्यर्थियों ने निर्वाचन आयोग द्वारा सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण और न ही स्पष्टीकरण दिया है अथवा उनके द्वारा प्रस्तुत अभ्यावेदनों पर, यदि कोई हों, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः अब निर्वाचन आयोग, उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों का संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए एतद्द्वारा निरहित घोषित करता है :—

## सारणी

क्र. सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरहता के कारण
(1)	(2)	(3)	(4)	(5)
1.	विधान सभा निर्वाचन क्षेत्र के लिए साधारण निर्वाचन, 2003	54-जमवारामगढ़	श्री जगदीश गांव पो.-डांगरवाडा तहसील-जमवारामगढ़ राजस्थान।	लेखा दाखिल नहीं किया
2.	—वही—	57-बानसूर	श्री गणपत मु.पो.-नांगललाखा तहसील-बानसूर अलवर, राजस्थान।	—वही—
3.	—वही—	—वही—	श्री रमेश ग्राम-शाहपुर पो.-गूता तहसील-बानसूर अलवर, राजस्थान।	—वही—

(1)	(2)	(3)	(4)	(5)
4.	विधान सभा निर्वाचन क्षेत्र के लिए साधारण निर्वाचन, 2003	56-बहरोड़	श्री बृज मोहन मु.पो.-पीपली तहसील-बहरोड़, राजस्थान।	लेखा दाखिल नहीं किया
5.	—वही—	—वही—	श्री नरेश कुमार ग्राम पो.-कांकरदोपा तहसील-बहरोड़, राजस्थान।	—वही—
6.	—वही—	—वही—	श्री औमप्रकाश ग्रा. पो.-तसींग तहसील-बहरोड़, राजस्थान।	—वही—
7.	—वही—	—वही—	वीना ग्रा.-चांदीचाना पो.-रिवाला, तह.-बहरोड़, राजस्थान।	—वही—
8.	—वही—	59-मुण्डावर	श्री सुरेश चन्द ग्रा. पो.-मुण्डावर राजस्थान।	—वही—
9.	—वही—	—वही—	श्री ओम पाल सिंह मु.पो.-सिहाली कलां तहसील-मुण्डावर, राजस्थान।	—वही—
10.	—वही—	63-अलवर	श्री मोहित गुलाटी प्लॉट नं. 67, ग्रा. पो.-बहादुरपुर, तहसील-अलवर, राजस्थान।	—वही—
11.	—वही—	—वही—	श्री राजू शर्मा मीना पाड़ी, अलवर, राजस्थान।	—वही—
12.	—वही—	—वही—	श्री संजीव शर्मा, 12/198, आजाद नगर, 60 फुट रोड, अलवर, राजस्थान।	—वही—
13.	—वही—	66-लक्ष्मणगढ़	शेर मोहम्मद ग्राम मन्नका, पो. तुलेडा तह. व जिला अलवर, राजस्थान।	—वही—
14.	—वही—	—वही—	नसरू ग्राम पोस्ट-हरसोली अलवर, राजस्थान।	—वही—

(1)	(2)	(3)	(4)	(5)
15.	विधान सभा निर्वाचन क्षेत्र के लिए साधारण निर्वाचन, 2003	—वही—	भगवान सिंह ग्राम पो.-निभैडा तहसील-लक्ष्मणगढ़, राजस्थान।	लेखा दाखिल नहीं किया
16.	—वही—	94-किशनगढ़	श्री मानवेन्दर सिंह छिरं हवेली ब्रजराज मन्दिर के पीछे, नया शहर किशनगढ़ जिला अजमेर राजस्थान।	—वही—
17.	—वही—	95-अजमेर पूर्व (अ.जा.)	श्री भंवर सिंह 586/28, श्रृंगार चंवरी, बिहारी गंज, अजमेर, राजस्थान।	—वही—
18.	—वही—	96-अजमेर पश्चिम	श्री सुदामा शर्मा रावण की बगीची केसर गंज, अजमेर राजस्थान।	—वही—
19.	—वही—	98-नसीराबाद	श्री अनिल 3249 सुत्तरखाना, मोहल्ला, नसीराबाद, राजस्थान।	—वही—
20.	—वही—	—वही—	अब्दुल जाहिद फूलागंज जामा मस्जिद के पास, 1564 नसीराबाद, राजस्थान।	—वही—
21.	—वही—	—वही—	श्री महेश प्रसाद 2645, सायरओली बाजार, नसीराबाद, राजस्थान।	—वही—
22.	—वही—	99-ब्यावर	श्री हरीकिशन म.नं. 114, किशनगंज, ब्यावर।	—वही—
23.	—वही—	—वही—	श्री कल्याणसिंह ग्राम धर्मा की तलाई, पोस्ट टाटगढ़, राजस्थान।	—वही—
24.	—वही—	102-केकड़ी (अ.जा.)	श्री गोरी शंकर मु.पो.-देवल तहसील मालपुरा, टोंक, राजस्थान।	—वही—

[सं. राज/76/2003]

आदेश से,

एस. के. कौरा, सचिव

## ORDER

New Delhi, the 9th August, 2004

O.N. 46.— Whereas the Election Commission of India is satisfied that each of the contesting candidate specified in column 4 of the Table below at the General Election to the Legislative Assembly in Rajasthan State 2003, specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order :—

TABLE

S. No.	Particulars of Election	Sl. No. and Name of Assembly Constituency	Name and Address of Contesting Candidate	Reasons for Disqualification
(1)	(2)	(3)	(4)	(5)
1.	General Election to the Legislative Assembly, 2003	54-Jamwaramgarh	Shri Jagdish Vill. & PO. Dangarwada Teh. Jamwaramgarh, Rajasthan	Account not lodged
2.	-do-	57-Bansur	Shri Ganpat Hq. & PO. Nagallakha, Teh.-Bansur, Alwar, Rajasthan	-do-
3.	-do-	-do-	Shri Ramesh Vill.-Shahpur, PO.-Gunta, Teh.-Bansur, Alwar, Rajasthan	-do-
4.	-do-	58-Behror	Shri Brij Mohan Hq. & PO.-Pipli, Teh. Behror, Rajasthan	-do-
5.	-do-	-do-	Shri Naresh Kumar Vill. & PO.-Kankardopa Teh. Behror, Rajasthan	-do-
6.	-do-	-do-	Shri Om Prakash Vill. & PO.-Tasing Teh.-Behror, Rajasthan	-do-
7.	-do-	-do-	Veena Vill.-Chandichana Post-Riwali Teh.-Behror, Rajasthan	-do-
8.	-do-	59-Mandawar	Shri Suresh Chand Vill. & PO.-Mandawar Rajasthan	-do-

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(1)	(2)	(3)	(4)	(5)
9.	General Election to the Legislative Assembly, 2003	59-Mandawar	Shri Om Pal Singh Hq. & PO. Sihali Kalan Teh. Mandawar Rajasthan	Account not lodged
10.	-do-	63-Alwar	Shri Mohit Gulati Plot No. 67, Vill. & PO.-Bahadurpur, Teh.-Alwar, Dist.-Alwar, Rajasthan	-do-
11.	-do-	-do-	Shri Raju Sharma Meena Padi, Alwar, Rajasthan	-do-
12.	-do-	-do-	Shri Sanjeev Sharma 12/198, Azad Nagar, 60 Foot Road, Alwar, Rajasthan	-do-
13.	-do-	66-Lachhmangarh	Sher Mohammad Vill.-Mannaka PO.-Tuleda Teh & Dist.-Alwar Rajasthan	-do-
14.	-do-	-do-	Nasru Vill. & PO. Harsoli, Alwar, Rajasthan	-do-
15.	-do-	-do-	Shri Bhagwan Singh Vill. & PO.-Nibhaida, Lachhmangarh, Rajasthan	-do-
16.	-do-	94-Kishangarh	Shri Manvender Singh Chhira Haweli, Beside of Brajraj Mandir, Naya Saher, Kishangarh, Dist.-Ajmer, Rajasthan	-do-
17.	-do-	95-Ajmer East (SC)	Shri Bhanwar Singh 586/28, Shrinagar Chanwdi Bihari Ganj, Ajmer, Rajasthan	-do-
18.	-do-	96-Ajmer West	Shri Sudama Sharma Ravan Ki Bagichi, Keshar Ganj, Ajmer, Rajasthan	-do-
19.	-do-	98-Nasirabad	Shri Anil 3249, Sutarkhana Mohalla, Nasirabad, Rajasthan	-do-
20.	-do-	-do-	Abdul Zahid Near Phoolaganj Jama Masjid, 1564 Nasirabad, Rajasthan	-do-

(1)	(2)	(3)	(4)	(5)
21.	General Election to the Legislative Assembly, 2003	98-Nasirabad	Shri Mahesh Prasad 2645, Sayar Oli Bazar, Nasirabad, Rajasthan	Account not lodged
22.	-do-	99-Beawar	Shri Harikishan H. No. 114, Kishanganj, Beawar, Rajasthan	-do-
23.	-do-	-do-	Shri Kalyan Singh Vill. Dharma Ki Talai, Post-Tatgarh, Rajasthan	-do-
24.	-do-	102-Kekri(SC)	Shri Gauri Shanker Hq. & Post, Deval, Teh. Malpura, Tonk, Rajasthan	-do-

[No. RJ/76/2003]

By Order,

S. K. KAURA, Secy.

नई दिल्ली, 10 अगस्त, 2004

आ.अ. 47.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116ग की उपधारा (2) के खण्ड (ख) के अनुसरण में, भारत निर्वाचन आयोग 2002 की निर्वाचन अर्जी सं. 27 (हरियाणा राज्य से राज्य सभा के लिए श्रीमती सुमित्रा महाजन और श्री हरेन्द्र सिंह मलिक के निर्वाचन को चुनौती देते हुए श्री जयपाल सिंह द्वारा दाखिल की गई थी) में चंडीगढ़ स्थित पंजाब और हरियाणा उच्च न्यायालय के तारीख 30 जनवरी, 2003 के आदेश से उत्पन्न हुई 2003 की सिविल अपील सं. 3749 में 1 अप्रैल, 2004 को भारत के उच्चतम न्यायालय के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/रा.स.-हरि/27/02/2003]

आदेश से,

ए. के. मजुमदार, सचिव

New Delhi, the 10th August, 2004

O.N. 47.— In pursuance of clause (b) of Sub-section (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment of the Supreme Court of India dated 1st April, 2004 in Civil Appeal No. 3749 of 2003 arising from the order dated 30th January, 2003 of the High Court of Punjab and Haryana at Chandigarh in Election Petition No. 27 of 2002 (filed by Shri Jaipal Singh challenging the election of Smt. Sumitra Mahajan and Shri Harendra Singh Malik to the Council of States from the State of Haryana).

## IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

## CIVIL APPEAL NO. 3749 OF 2003

Jaipal Singh

.....Appellant

Versus

Smt. Sumitra Mahajan &amp; Anr.

.....Respondents

## JUDGMENT

KAPADIA, J.

Whether the election petition filed by the appellant was lacking in material facts as required under Section 83(1)(a) of the Representation of the People Act, 1951 (hereinafter referred to as "the said Act") is the question which arises for determination in his appeal referred under Section 116-A of the said Act.

The appellant was a member of Indian Administration Service having 40 years service to his credit and who was 59-1/2 years old. By letter dated 13-3-2002, he sought voluntary retirement under rule 16(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as "the 1958 Rules") with immediate effect. Appellant was registered as an elector at 535, Halqa No. 62, Mujeggar Plot No. 9A, Sector-6, Faridabad in the State of Haryana and eligible to contest election to Rajya Sabha, in which two vacancies had occurred which were to be filled from the State of Haryana. A notification was issued to fill up the two vacancies under which the last date of filing the nomination papers was 14-3-2002, the date of scrutiny was 15-3-2002, last date of withdrawal was 18-3-2002 and the date of polling was 27-3-2003. The appellant sought voluntary retirement from service as he wanted to contest the election to Rajya Sabha. On 15-3-2003, the Returning Officer rejected the nomination papers of the appellant on the ground that rule 16 of the 1958 Rules warranted giving three months previous notice to the appointing authority and since the said period had not elapsed on the date of scrutiny the appellant was holding the office of profit on that day and, therefore, stood disqualified under Article 102(1)(c) of the Constitution. On 18-3-2002 election results were announced, since there was no contest after rejection of the nomination papers submitted by the appellant. Aggrieved, the appellant filed election petition No.27 of 2002 in the High Court on the ground that his nomination papers had been wrongly rejected by the Returning Officer. In the election petition, he stated that on completion of 40 years of service and on attaining the age of 59-1/2 years, he was eligible to seek voluntary retirement under the 1958 Rules, that he had applied for the same through proper channel on 13-3-2002; that he had also made a request to the appointing authority to waive notice period of three months for seeking voluntary retirement; that he had relinquished the charge on 13-3-2002; and consequently, he was not holding office of profit with the Government on that day and, therefore, he was eligible to seek election to Rajya Sabha. In the election petition, the appellant further pleaded that his request was duly received by the Government of India, Ministry of Personnel—appointing authority and also by Government of Haryana at Chandigarh. He further averred that he sought voluntary retirement on account of illness of his wife and after resigning voluntarily from his post he had filed nomination papers. He further averred that on the date of the scrutiny, he was present when he brought to the notice of the Returning Officer the factum of his voluntary retirement but the Returning Officer disregarded the provisions of the 1958 Rules as also the provisions of All India Services (Condition of Service-residuary Matters) Rules, 1960 [hereinafter referred to as "the 1960 Rules"] as also Fundamental Rules, 1922. In the election petition, the appellant had alleged that the action of the Returning Officer in rejecting his nomination papers was not justified as the appointing authority has the power under the 1960 Rules to relax the condition and to waive the notice period of three months in the case of an employee who seeks voluntary retirement. He further stated that since his nomination papers were rejected, there was no contest and results were declared on 18-3-2002 when respondents were declared as members of the Rajya Sabha from the State of Haryana. In the light of the above allegations. The appellant challenged the election of the respondents on the ground of improper rejection of his nomination papers. The election petition was scrutinized by the Registry of the High Court, which was found to have been filed within period of limitation and accordingly it was numbered and notices were issued to the respondents who appeared before the High Court on 31-7-2002 through their counsel. A joint written statement was filed by the respondents contraverting the averments made by the appellant. A preliminary objection was raised to the effect that the averments contained in the election petition were vague and lacked material facts and particulars, as such, the said petition was liable to be dismissed. In the written statement, the respondent submitted that the petition was liable to be dismissed as the appellant had not disclosed a material fact as to on which date he had received communication regarding acceptance of his application for voluntary retirement. On merits also, the respondents denied various averments made by the appellant.

On the above pleadings, a preliminary issue was framed by the High Court—as to whether the petition lacked in material facts and did not disclose cause of action. By the impugned judgment, the High Court held that Section 83(1)(a) of the said Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies, that in the present case, the appellant had failed to ever and lead two material facts viz. That his application for voluntary retirement was accepted by the appointing authority before the date of scrutiny and that his request for waiver of the notice period of three months was actually accepted. In the absence of disclosure of the above facts the High Court dismissed the election petition.

Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of the appellant submitted that in service jurisprudence, the effect of "resignation" and "voluntary retirement" is the same and there was no difference between the two. Learned counsel for the appellant urged that in this case the Court was not concerned with the merits of the matter or the effect of the letter of voluntary retirement dated 13-3-2002. In this connection, learned counsel submitted that the appellant had disclosed all the material facts concerning the present case viz that he had voluntarily retired from the service, that he had relinquished the charge w.e.f. 13-3-2002 and that he had made a request to the appointing authority to waive the notice period and that his request was duly received by the appointing authority on 13-3-2002. In the circumstances, it was submitted that all material facts have been stated in the election petition. It was urged that acceptance by the Government of the application of the appellant seeking permission to retire and requesting for waiver of notice were not material facts specifically required to be stated in the election petition and that they were circumstances which could have been examined by the Court at the time of trial. In this connection, it was further submitted that the retirement was

complete, as far as the appellant was concerned, on 13-3-2002 and, therefore, the waiver of notice period did not affect the voluntary retirement submitted by the appellant. It was urged that granting of waiver or consequences of waiver were questions of law which were not required to be pleaded in the petition and which were to be proved at the time of trial. It was also urged that similarly relinquishment of the post was a disputed fact which ought to have been decided at the stage of trial. For the above reasons, it was submitted that the High Court had erred in holding that the appellant had failed to aver material facts in terms of section 83(1)(a) of the said Act.

Aggrieved the appellant has come by way of appeal to this Court under section 116-A of the said Act.

The short issue which arises for our determination—whether election petition as filed by the appellant could have gone to trial. Section 83(1) of the said Act read as under :—

“83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings.”

Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practices which petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of *Sopan Sukhdeo Sable & Ors. V. Assistant Charity Commissioner & Ors.* Reported in [2004(2) Scale 82] it has been held that the Order VI Rule 2(1) of CPC deals with basic rule of pleadings and declares that the pleading has to state ‘material facts’ and not the evidence; that there is a distinction between ‘material facts’ and ‘particulars’ and the words ‘material facts’ show that the facts necessary to formulate a complete cause of action must be stated. Omission of single material fact leads to an incomplete cause of action and consequently, the plaint becomes bad. The distinction between ‘material facts’ and ‘particulars’ was brought by Scott, L.J. in *Bruce Vs. Odhems Press Ltd.* [(1936) 1 KB 697] in the following passage :—

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word “material” means necessary for the purpose of formulating a complete cause of action; and if any one “material” statement is omitted, the statement of claim is bad; it is “demurrable” in the old phraseology, and in the new is liable to be “struck out” under R.S.C. Order XXV, Rule 4 [see *Philipps V. Philipps* (1872) 4 QED 127]; or “a further and better statement of claim” may be ordered under Rule 7. The function of “particulars” under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim—gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiffs cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiffs cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.”

The above dictum of Scott, LJ in *Bruce’s case* (supra) has been quoted with approval by this court in the case of *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238].

As to what is the material fact has to be decided in the present case, in the context of the election petition under the said Act. An election petition is a matter of statutory right. In the petition, the key issue was ; whether the appellant held an office of profit on the date of scrutiny. For that purpose, appellant ought to have stated that on 13-3-2002 he had requested for waiver of the notice period; that the appointing authority had received the notice on the specified date and that his request for waiver stood granted on the date of scrutiny and he ceased to be a government servant. These were the material facts which the appellant should have pleaded so that the returned candidates would not be taken by surprise. They were material facts within his knowledge and ought to have been pleaded in the election petition. Lastly, even the letter of the appellant seeking the waiver of the notice period did not form part of the election petition. Hence the High Court was right in dismissing the election petition for want of material facts.

We also do not find any merit in the argument advanced on behalf of the appellant that the acceptance by the appointing authority of the application seeking permission to retire was not required as there was no difference between “voluntary retirement” and “resignation”. In the case of *Reserve Bank of India & Anr. V. Cecil Dennis Solomon & Anr.* Reported in [2004 (100) FLR 441], this Court has laid down that in service jurisprudence there is a difference between “voluntary retirement” and “resignation” as they convey different connotations. It has been held that voluntary retirement

and resignation involve voluntary acts on the part of the employee to leave service and though both involve voluntary acts, they operate differently. One of the basic distinction between the two is that in the case of resignation, it can be tendered at any time but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. In the case of resignation, a prior permission is not mandatory while in the case of voluntary retirement, permission of concerned employer is requisite condition. Under rule 16 of the 1958 Rules, an employee who seeks voluntary retirement has to give three months notice to enable the employer to complete the designated mode of acceptance [See Halsbury's Laws of England, 4th Edition, Vol. 9 Page 133]. Lastly, in a given case, the appointing authority may refuse to waive the said notice period which shows that resignation may be unilateral whereas voluntary retirement is bilateral. A similar question came before this Court in the case of UCO Bank & Ors. *V. Sanwar Mal* decided on 11-3-2004 *vide* Civil Appeal No. 3192 of 1999 (unreported), in which this Court has *inter alia* held that in the case of 'resignation' the relationship of employer and employee terminates on acceptance of resignation whereas in the case of 'retirement', voluntary or on superannuation, the relationship continues for the purposes of payment of retiral benefits. In the case of retirement, there is a nexus between such retirement and retiral benefits. For the aforesaid reasons we do not find any merit in the arguments advanced on behalf of the appellant.

Before concluding, we may state that several judgments were cited by the learned counsel for the appellant on the question as to what constitutes material facts. It is not necessary to discuss the said judgments as the answer depends on the facts of each case. In all the judgments cited on behalf of the appellant, it has been held by this Court that material facts are primary facts disclosing cause of action and such facts have got to be pleaded and failure to do so shall result in rejection of election petition though defect in material particulars can be cured at a later stage by amendment. In the present case we are concerned with the application of the above law to the facts of this case. Hence, it is not necessary for us to burden this judgment with various authorities cited on behalf of the appellant.

In the result, this appeal fails and the same is dismissed accordingly, with no order as to costs.

V. N. KHARE, CJI

S. H. KAPADIA, J.

New Delhi,  
April 1, 2004.

[No. 82/CS-HR/27/02/2003]

By Order,

A. K. MAJUMDAR, Secy.